

Extracts of the Land Conservation Rules for State and Kaua`i, Maui, and Hawai`i Counties

State:

Hawaii Revised Statutes (HRS) regarding Land Conservation Fund

Comment: The State statute establishing the State Land Conservation Fund allows for the use of fund for operation, maintenance and management. The statute provides in relevant part:

§173A-5 Land conservation fund. (a) A land conservation fund, hereinafter called "fund", is hereby established.

(b) The proceeds from the sale of any general obligation bonds authorized and issued for purposes of this chapter shall be deposited in or credited to the fund.

(c) Any net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on the land acquired or constructed by the board under the provisions of this chapter shall also be deposited in or credited to the fund.

(d) The appropriate percentage identified under section 247-7 of all taxes imposed and collected under chapter 247 shall be deposited in or credited to the fund every fiscal year.

(e) Moneys from any other private or public source may be deposited in or credited to the fund; provided that mandates, regulations, or conditions on these funds do not conflict with the use of the fund under this chapter. Moneys received as a deposit or private contribution shall be deposited, used, and accounted for in accordance with the conditions established by the agency or person making the contribution.

(f) The fund shall be administered and managed by the department.

(g) The acquisition of interests or rights in land having value as a resource to the State for the preservation of the following shall constitute a public purpose for which public funds may be expended or advanced:

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (6) Parks;

- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources.
- (h) The fund shall be used for:
 - (1) The acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the establishment of permanent conservation easements under chapter 198 or agricultural easements;
 - (2) The payment of any debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State;
 - (3) Annual administration costs for the fund, not to exceed five per cent of annual fund revenues of the previous year[; and]
 - (4) Costs related to the operation, maintenance, and management of lands acquired by way of this fund that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands; provided that the costs related to the operation, maintenance, and management of lands acquired by way of this fund **do not exceed five per cent of annual fund revenues of the previous year.**

2. State law also authorized the distribution of grant funds for operation, maintenance and management:

§173A-9 Grants to state agencies, counties, and nonprofit land conservation organizations. After consultation with the senate president and speaker of the house of representatives, and subject to the approval of the governor, the board may make grants to state agencies, counties, and nonprofit land conservation organizations from available funds for the purchase or acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the purchase of permanent conservation easements under chapter 198, and approved for purchase or acquisition by the board, or for the operation, maintenance, and management of lands acquired under this chapter that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands. Any land so acquired by any state agency or county may be sold, leased, or otherwise disposed of, subject to chapter 171, with the prior written approval of the board. Any land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board. Any permanent conservation easement established under this section that includes partnership with a federal land conservation program may be transferred only as provided by rules of the federal program. [L 1973, c 77, §9; am L 2005, c 156, §5; am L 2006, c 254, §5; am L 2008, c 139, §3]

Kaua`i County

THE CHARTER OF THE COUNTY OF KAUAI (2020 Codified Version)

Section 19.15

C. Public access, open space, natural resources preservation fund.

(1) In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the certified real property tax revenues to a fund known as the public access, open space, natural resources preservation fund. The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements **and any corresponding improvement of those lands or property entitlements** for land conservation purposes in the County of Kauai for the following purposes: public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; preserving forests, beaches, coastal areas, and agricultural lands; protecting watershed lands to preserve water quality and water supply; conserving land in order to reduce erosion, floods, landslides, and runoff; improving disabled and public access to, and enjoyment of, public land, and open space; acquiring disabled and public access to public land, and open space.

(2) The moneys in this fund may also be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to sections 3.13, 3.14, or 3.15 of the charter, in whole or in part for the purposes enumerated in paragraph (1) of this section and for the payment of costs associated with the purchase, redemption, or refunding of such bonds.

(3) The moneys in this fund may also be used to improve public pedestrian access to coastal areas.

(4) At any given time, no more than 5 percent of this fund shall be used for administrative expenses.

(5) Any balance remaining in this fund at the end of any fiscal year shall not lapse but shall remain in the fund, accumulating from year to year. The moneys in this fund shall not be used for any purpose except those listed in this section.

(6) The council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund. Such ordinances shall include the following provisions:

- (a) Utilizing a community-based process that incorporates countywide community input, for the purposes of establishing annual recommended priorities of lands or other property entitlements to be acquired for those land conservation purposes described in paragraph C of section 19.15 of the charter. (Amended 1992, 2002, 2018)

Maui County

CHARTER COUNTY OF MAUI 2021 EDITION

Section 9-19. Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.

1. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one percent (1%) of the certified real property tax revenues to a fund known as the open space, natural resources, cultural resources, and scenic views preservation fund. The revenues in this fund shall be utilized for:

- a. Purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Maui for the following purposes: public outdoor recreation and education; preservation of historic or culturally important land areas; protection of significant habitat or ecosystems, including buffer zones; preserving forests, beaches, coastal areas, and agricultural lands; protecting watershed lands to preserve water quality; conserving land for the purpose of reducing erosion, floods, landslides, and runoff; and improving disabled and public access to, and enjoyment of, public land, open space, and recreational facilities; or
- b. Performing safety and security improvements on lands acquired through this fund.

2. Any balance remaining in this fund at the end of the fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The revenues in this fund shall not be used for any purpose except those listed in paragraph one of this section.

3. The council shall by ordinance establish procedures for the administration and expenditure of the revenues in this fund. The appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made. (Amended 2018, 2002)

Hawaii County

CHARTER COUNTY OF HAWAI'I 2018

Section 10-15. Public Access, Open Space, and Natural Resources Preservation Fund.

- (a) In adopting each fiscal year's operating budget, the council shall appropriate a minimum of two percent of the certified real property tax revenues, including penalty and interest, to a fund known as the public access, open space, and natural resources preservation fund. Deposits to the fund shall occur at a minimum, on a quarterly basis.
- (b) Funding shall consist of a minimum of two percent of actual revenue received in the fiscal year. Additional revenue may consist of grants and private contributions intended for the purpose of this section, voluntary contributions of any amount as specified on the real property tax bill, proceeds from the sale of general obligation bonds authorized and issued for the purpose of this section, council appropriations for the purpose of this section, and any other source of revenue.
- (c) Monies in this fund shall be used **solely to:**
 - (1) Purchase or otherwise acquire lands and easements in the County of Hawai'i for public outdoor recreation and education, including:
 - (A) Access to beaches and mountains;
 - (B) Preservation of historic or culturally important land areas and sites;
 - (C) Protection of natural resources, significant habitat or eco-systems, including buffer zones;
 - (D) Preservation of forests, beaches, coastal areas, natural beauty and agricultural lands; and
 - (E) Protection of watershed lands to preserve water quality and water supply.
 - (2) Pay the principal, interest and premium, if any, due with respect to bonds issued in whole for the purpose of this fund.
 - (3) Pay for the salary, wages and benefits of staff dedicated to advancing the activities contained within this section and Section 10-16 of this charter.
- (d) Any balance remaining in the fund at the end of any fiscal year shall not lapse, but shall remain in the fund accumulating interest from year to year. The moneys in this fund shall not be used for any purpose except those listed in this section.
- (e) The council shall by ordinance establish procedures for the administration and expenditure of moneys in this fund.

- (f) This fund shall be used for acquisition of land and easements and shall not be used for development, maintenance or for any purpose other than as provided in this section.
 - (g) The highest and best use of this fund is to leverage the money in the fund by attracting matching funds, although, matching funds are not required in every purchase.
 - (h) Any land acquired with this fund shall contain the following restrictive covenant in its recorded deed of conveyance: "This land was acquired with moneys from the Public Access, Open Space, and Natural Resources Preservation Fund. It shall be held in perpetuity for the use and enjoyment of the people of Hawai'i County and may not be sold, mortgaged, traded or transferred in any way."
 - (i) Any easement acquired with this fund shall contain the following restrictive covenant in its recorded deed of conveyance: "This easement was acquired with moneys from the Public Access, Open Space, and Natural Resources Preservation Fund. It shall be held in perpetuity for the use and enjoyment of the people of Hawai'i County and may not be sold, mortgaged, traded or transferred in any way.'"
- (2010, Prop. 1, sec. 1; 2012, Ord. No. 11-94, sec. 1; 2020, Prop. 6, sec. 1.)

Section 10-16. Public Access, Open Space, and Natural Resources Preservation Maintenance Fund.

- (a) The purpose of the public access, open space, and natural resources preservation maintenance fund is to accrue and use moneys for maintenance of lands and easements acquired by the public access, open space, and natural resources preservation fund. The maintenance fund will ensure that money is dedicated to preserve the land, promote public safety, and maintain a healthy stewardship.
- (b) For the purpose of this section, "maintenance" means to preserve and conserve lands and easements acquired by the public access, open space, and natural resources preservation fund and keep them in good repair for public safety.
- (c) There is established a public access, open space, and natural resources preservation maintenance fund (hereinafter "maintenance fund"). The maintenance fund shall be administered and managed by the department of finance.
- (d) Deposits due to the maintenance fund.
 - (1) In adopting each fiscal year's operating budget, the council shall appropriate one quarter of one per cent of all real property tax revenue (including interest and penalties) to the maintenance fund. Deposits to the maintenance fund shall occur on a quarterly basis at a minimum.

- (2) Additional revenue deposited in the maintenance fund may consist of grants and private contributions intended for the purpose of this section, proceeds from the sale of general obligation bonds authorized and issued for the purpose of this section, council appropriations for the purpose of this section, and any other source of revenue.
- (e) Accounting for the maintenance fund; interest bearing accounts; reporting by the department of finance.
- (1) All moneys in the maintenance fund shall be deposited in interest bearing accounts until needed. Any interest shall accrue to the maintenance fund.
 - (2) Moneys in the maintenance fund shall be identified separately for:
 - (A) Funding received from the real property tax revenue including interest and penalties; and
 - (B) Funding received from grants and private contributions, and any other source of revenue, and its interest earned, which:
 - 1 . Shall be itemized and earmarked for specific projects for the lands or easements.
 - 11 . Shall not be subjected to the maximum accrual of funds limit provided in subsection (f).
 - (3) Financial statements shall be posted each month on the public access, open space, and natural resources preservation fund web site.
- (f) Maximum accrual limit in maintenance fund; exemption to funding.
- (1) Only moneys derived from real property tax revenue, its interest, and its penalties shall be included in the computation of the maximum accrual limit for the maintenance fund. All other moneys specifically directed to the maintenance fund shall be held separately from those moneys in the maintenance fund that originated from real property tax revenues (including interest and penalties), and shall not be subjected to the maximum accrual limit.
 - (2) The maximum accrual limit shall not exceed \$3,000,000.
 - (3) At the end of any fiscal year in which the maintenance fund holds unencumbered funds derived from real property tax revenue (including interest and penalties) of at least \$3,000,000, any unencumbered amount in excess of that \$3,000,000 shall be permanently transferred to the general fund balance.
 - (4) Exemption to funding. If the maintenance fund holds \$3,000,000 in unencumbered funds derived from real property tax revenue

(including interest and penalties), then the council and the executive branch do not need to add more money to the maintenance fund until the next budget cycle. This exemption shall not release the administration from its mandatory duty to maintain and preserve lands and easements acquired by the public access, open space, and natural resources preservation fund in good repair for public safety each fiscal year.

- (g) The maintenance fund shall be used solely for public safety maintenance and preservation of those lands and easements acquired by the public access, open space, and natural resources preservation fund, and shall be used only for expenditures directly related to its purpose. Expenditures by the administration and/or stewardship grants presumed to be directly related are as follows:

- (1) Reparation (fixing, mending, repair work, and servicing);
- (2) Preservation (damage control, salvaging, safekeeping, and safeguarding);
- (3) Conservation of soil, forests, shorelines, native wildlife, streams, wetlands, watershed, and floodways;
- (4) Restoration (replacement, reclamation, reconditioning, and remediation);
- (5) Wildfire and fire prevention;
- (6) Repair of existing buildings to meet the current code requirements, if the building is deemed reasonable to save;
- (7) Replacing signs to meet the current code requirements;
- (8) Installation, repair, or replacement fencing and gate or access mechanisms;
- (9) Installation or repair of cattle guards;
- (10) Building, renting, leasing, installing, and maintenance of toilet facilities;
(1 1) Building and installation of small sheds or structures for the storage of maintenance equipment;
- (12) Building, installation and maintenance of structures to provide protection from the elements;
- (13) Creation of trails or paths to access land for public safety, maintenance, and preservation;
- (14) Mitigation of flooding problems including repair or restoration of existing culverts, drainage features, or other similar flood control mitigation;

- (15) Archeological survey and buffering of Native Hawaiian historical or cultural sites after appropriate consultation with Native Hawaiian descendants and cultural practitioners;
 - (16) Biological studies for the protection of Native Hawaiian species of plants and animals; or
 - (17) Mitigation of Americans with Disabilities Act compliance issues that may arise during the course of public safety maintenance and preservation.
- (h) Stewardship Grants. Moneys may also be used to provide grants-in-aid for projects, which uses are reflected in subsection (g).
- (1) An award of a stewardship grant shall be by council resolution. Stewardship grants may be awarded only until moneys in the maintenance fund are extinguished. Grants shall be awarded on the basis of ability of the stewardship organization to complete the project on time and within cost estimates.
 - (2) Only 501(c)3 nonprofits or an organization that operates under the umbrella of a 501 (c)3 nonprofit, and that can complete a project for the good of the community, shall be considered for a stewardship grant.
 - (3) Public notice by the department of finance of the availability of the stewardship grants shall be placed in two newspapers of general circulation, as well as electronic media accessible by internet, by August 1 of each fiscal year provided money is available. These advertisements shall be paid for from the maintenance fund.
 - (4) To apply for a stewardship grant, a stewardship organization shall provide to the department of finance and the public access, open space, and natural resources preservation commission the following:
 - (A) An application form obtained from the department of finance, which is completed for each specific purpose or project;
 - (B) A copy of its letter of determination from the Internal Revenue Service confirming its 501(c)3 status or the 501(c)3 status of the umbrella organization;
 - (C) A copy of its bylaws and mission statement;
 - (D) A detailed business plan that includes the description of the specific project, time frames for project goals, costs, and activities to accomplish the stated purpose, and any other information requested by the department of finance; and
 - (E) A signed agreement to file a written report to the department of finance one year or less after receipt of funds

or thirty days following project completion, which shall include details as to what has been accomplished on the project, actual costs, expense receipts, and any other information requested by the department of finance. The completed report shall be provided to the public access, open space, and natural resources preservation commission and the council.

- (5) Unexpended funds shall be returned to the maintenance fund within thirty days of submitting a final report.
 - (6) No officer, board member, or employee of the 501(c)3 nonprofit organization or the organization that operates under the umbrella of a 501(c)3 nonprofit organization shall receive a salary or any portion of a salary from this fund for performing their general duties or functions as an officer, board member or employee; however, compensation for specific duties such as labor, educational workshops and maintenance work may be paid to an officer, board member or employee if those duties have been specifically identified and officially approved in the detailed business plan submitted as part of the stewardship grant proposal. The 501(c)3 nonprofit shall sign an agreement so stating these conditions and submit it with the application.
 - (7) Mismanagement of moneys awarded for a stewardship grant shall permanently bar the 501(c)3 nonprofit organization and the organization that operates under the umbrella of a 501 (c)3 nonprofit organization from receiving future grants from the maintenance fund.
 - (8) The director of the department of finance shall provide a short written evaluation of the proposed project to the council and include a recommendation about the applicant's ability to complete the project according to the project plan.
- (2012, Ord. No. 12-16, sec. 1; 2020, Prop. 10, sec. 1.)